Grede v. ABN AMRO Clearing Chicago, LLC.

2014 | Cited 0 times | N.D. Illinois | September 9, 2014

IN THE UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF ILLINOIS

EASTERN DIVISION FREDERICK J. GREDE, not individually but as Liquidation Trustee of the Sentinel Liquidation Trust,

Plaintiff, v. IFX MARKETS, INC., IPGL, LTD. & HAIN CAPITAL HOLDINGS, LTD., Defendants. _____ FARR FINANCIAL, INC.,

Defendant. _____ CADENT FINANCIAL SERVICES,

Defendant. _____ RAND FINANCIAL SERVICES,

Defendant. _____ COUNTRY HEDGING INC.,

Defendant. _____ VELOCITY FUTURES, LP,

Defendant. _____ AMERICAN NATIONAL TRADING CORP.,

Defendant. _____ ABN AMRO CLEARING CHICAGO LLC (f/k/a FORTIS CLEARING AMERICAS, LLC),

Defendant. _____ CROSSLAND LLC,

Defendant.

Case No. 09-cv-00115 Honorable James B. Zagel

Case No. 09-cv-00120

Case No. 09-cv-00127

Case No. 09-cv-00128

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Case No. 09-cv-00130

Case No. 09-cv-00135

Case No. 09-cv-00137

Case No. 09-cv-00138

Case No. 09-cv-00140 OMNIBUS MOTION FOR JUDGMENT ON COUNT III Plaintiff Frederick J. Grede, not individually but as liquidation trustee (the "Trustee") for the Sentinel Liquidation Trust ("Tr ust"), hereby moves the Court fo r entry of final judgment on Count III of the complaints against IFX Markets, Inc., IPGL, Ltd. & Hain Capital Holdings, Ltd. (Case No. 09-00115); Farr Financial, Inc. (Case No. 09-00120); Cadent Financial Services (Case No. 09-00127); Rand Financial Services (Case No. 09-00128); Country Hedging Inc. (Case No. 09-00130); Velocity Futures, LP (Case No. 09-00135); American National Trading Corp. (Case No. 09-00137); Fortis Clearing Americas, LLC (Case No. 09-00138); and Crossland LLC (Case No. 09-00140) (collectively, the "D efendants") and in support thereof states as follows:

1. This Court has jurisdiction over this lawsuit pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

2. On February 14, 2013, following trial in the FCStone proceeding, the Court entered judgment in favor of the Trustee and against FCStone on Count I (avoidance and recovery of post-petition transfer under Bankruptcy Code sections 549(a) and 550), Count II (avoidance and recovery of pre-petition preferential transfer under Bankruptcy Code sections 547(a) and 550), Count III (declaration that the assets in reserve accounts are property of the estate under Bankruptcy Code section 541), and Count V (reduction or disallowance of FCStone's claims) of the co mplaint against FC Stone. Grede v. FC Stone, LLC, 485 B.R. 854 (N.D. Ill. 2013). The Court entered judgment against the Trustee and in favor of FCStone on Count IV, an alternative count asserting assigned customer claims based on an unjust enrichment theory. Id. Both parties appealed the Court's judgment.

3. The Trustee thereafter sought summary judgment against the Defendants on Counts I, II, 1

III and V of his complaints against them pursuant to Federal Rule of Civil Procedure 56, seeking relief consistent with the Court's judgment in the FC Stone case. After the Trustee's motions for summary judgment agains t all of the Defendants were fully briefed, the Court entered orders in each of the above-captioned cases entering and continuing the motions for summary judgment until after the Court of Appeals for the Seventh Circuit issued its opinion in the FCStone appeal.

4. On March 19, 2014, the Court of Appeals for the Seventh Circuit issued its opinion in the FCStone appeal. The Seventh Circuit reversed the Court's judgment in favor of the Trustee on Counts I and II

in the FCStone case; affirmed the Court's judgment in favor of FCStone on Count IV; and remanded the FCStone case to this Court for further proceedings. Grede v. FCStone, LLC, 746 F.3d 244 (7th Cir. 2014).

5. On May 27, 2014, Court of Appeals for the Seventh Circuit issued its mandate in the FCStone case, which was docketed by the Clerk of this Court on May 28, 2014.

6. On September 3, 2014, the Defendants in the above-captioned proceedings filed with this Court motions for entry of judgment on Counts I, II, IV and V of the complaints against them based on the Seventh Circuit's FCStone decision. 2

The Defendants' motions do not address Count III of the complaints.

1 With respect to Cadent Financial Services (Case No. 09-00127), Rand Financial Services (Case No. 09- 00128), and Velocity Futures, LP (case No. 09-00135), the Trustee's motion on Count II is a partial motion for summary judgment limited to the August 17, 2007 transfers of proceeds related to the sale of securities to Citadel. 2 The Trustee will be separately responding to the motions addressing Counts I, II, IV and V pursuant to the briefing schedule set by the Court.

7. Count III of the complaints seeks a declaration that the cash held in reserve accounts established under Sentinel's Plan is property of the Debtor's estate, and may be distributed to Sentinel's creditors in accordance with the terms of the Plan.

8. This Court previously entered judgment in favor of the Trustee and against FCStone on Count III. Grede v. FC Stone, LLC, 485 B.R. 854, 890 (N.D. Ill. 2013). With respect to the property of the estate issue, the Court held that Cunningham v. Brown, 265 U.S. 1 (1924), and its progeny provide the framework for distributing commingled funds between similarly situated competing trust claimants in bankruptcy. Accordingly, the Court applied Cunningham's pro rata distribution system because FCStone was unable to trace the Citadel securities back to its actual deposited funds. FCStone, 485 B.R. at 875-78. Indeed, to the contrary, the Court found that "pure happenstance governed which Sentinel customers received payouts and which customers bore disproportionate losses." Id. at 889.

9. FCStone appealed this Court's Opinion and Or der. With respect to property of the estate, FCStone argued that the Court erred when it applied Cunningham and instead should have applied Begier v. I.R.S., 496 U.S. 53 (1990), wherein the IRS benefitted from a statutory floating trust in an abstract dollar amount rather than a trust in specific property. FCStone, 746 F.3d at 259.

10. The Seventh Circuit's opinion did not distur b the Court's findings and conclusions that cash in the reserve accounts was property of the estate. Indeed, the Seventh Circuit's opinion noted that it "agree[d] with the district court that there is no legal basis for putting one trust ahead of the other, despite FCStone and the CFTC's attempts to argue otherwise," and that "the district court had th e

better answer and that Cunningham and its progeny provide useful insight for resolving the competing trust claims in this case." FCStone, 746 F.3d at 259. The Seventh Circuit also believed that the property of the estate question would be "academic in this case because Sentinel's approved bankr uptcy plan treats all customers as part of a single class of unsecured creditors, and the time to appeal it has passed. . .[t]hat means that FCStone and the other Seg[ ] 1 and Seg[ ] 3 customers will be treated as unsecured creditors whether they can establish their trusts or not." Id. at 258.

11. Because the Court's findings and conclusions concerning the property-of-the- estate nature of the funds held in the reserve accounts were not disturbed by the Seventh Circuit decision, but rather, buttressed by the Seventh Circuit decision, judgment in favor of the Trustee and against the above-captioned Defendants should be entered on Count III.

WHEREFORE, the Trustee respectfully requests that this Court enter judgment in his favor and against each of the Defendants on Count III of the complaints filed in the above- captions actions, and for such other and further relief as the Court deems equitable and just. Dated: September 9, 2014 Respectfully submitted,

FREDERICK J. GREDE, not individually but as Liquidation Trustee of the Sentinel Liquidation Trust

By: /s/ Vincent E. Lazar One of his attorneys Catherine L. Steege Vincent E. Lazar Angela M. Allen Jenner & Block, LLP 353 N. Clark Street Chicago, IL 60654 Tel: 312-222-9350 Chris Gair Jeffrey Eberhard Gair Law Group, Ltd. 1 East Wacker Drive, Suite 2600 Chicago, IL 60601 Tel: 312-600-4900 Counsel for Frederick J. Grede, Liquidation Trustee for the Sentinel Liquidation Trust

CERTIFICATE OF SERVICE

I, Angela M. Allen, an attorney, certify that on September 9, 2014, I caused a copy of the Trustee's Omnibus Motion to Judgment on Count III to be served by electronic mail, upon: Robert V. Shannon John Steven Delnero K&L Gates LLP 70 West Madison Street Suite 3100 Chicago, IL 60602 Email: robert.shannon@klgates.com Email: john.delnero@klgates.com Counsel for IFX Markets, Inc. and IPGL, Ltd.

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/s/ Angela M. Allen Angela M. Allen